

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Docket No. 63 MAP 2012 & 72 MAP 2012

Robinson Township, Washington County, Pennsylvania, Brian Coppola, Individually and in his Official Capacity as Supervisor of Robinson Township, Township of Nockamixon, Bucks County, Pennsylvania, Township of South Fayette, Allegheny County, Pennsylvania, Peters Township, Washington County, Pennsylvania, David M. Ball, Individually and in his Official Capacity as Councilman of Peters Township, Township of Cecil, Washington County, Pennsylvania, Mount Pleasant Township, Washington County, Pennsylvania, Borough of Yardley, Bucks County, Pennsylvania, Delaware Riverkeeper Network, Maya Van Rossum, the Delaware Riverkeeper, Mehernosh Khan, M.D.,

v.

Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, Robert F. Powelson, in his Official Capacity as Chairman of the Public Utility Commission, Office of the Attorney General of Pennsylvania, Linda L. Kelly, in her Official Capacity as Attorney General of the Commonwealth of Pennsylvania, Pennsylvania Department of Environmental Protection and Michael L. Krancer, in his Official Capacity as Secretary of the Department of Environmental Protection

Appeal of: Pennsylvania Public Utility Commission, Robert F. Powelson, in his Official Capacity as Chairman of the Public Utility Commission & Pennsylvania Department of Environmental Protection and Michael L. Krancer, in his Official Capacity as Secretary of the Department of Environmental Protection

**BRIEF OF *AMICI CURIAE* OF INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 66, INTERNATIONAL UNION OF OPERATING
ENGINEERS – LOCAL 542, METROPOLITAN DISTRICT COUNCIL
OF CARPENTERS, UNITED ASSOCIATION OF PLUMBERS &
STEAMFITTERS – LOCAL 47, AND
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS – LOCAL 712**

Appeal from the Commonwealth Court order of July 26, 2012, in No. 284 MD 2012.

Received in Supreme Court

SEP 5 2012

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International Union of Operating Engineers – Locals 66 and 542, Metropolitan District Council of Carpenters, United Association of Plumbers & Steamfitters – Local 47, and International Brotherhood of Electrical Workers – Local 712 (collectively, “Union *Amici*”), file the within Brief of *Amici Curiae* in the above-captioned matter pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure.

I. STATEMENT OF INTEREST OF AMICI CURIAE

Union *Amici* file this brief in support of Appellant’s position to reverse the Commonwealth Court’s July 26, 2012 Order and Opinion granting Appellees’ motion for summary relief as to Counts I, II, III and VIII of Appellees’ Petition for Review and declaring unconstitutional parts of Act 13 of 2012, 58 Pa. C.S. §§ 2301-3504.

Union *Amici*’s interest in this case stems from the direct economic harm that will be caused to the members of each of the involved unions if the Commonwealth Court’s decision to strike the key provisions of Act 13 is allowed to stand. Thousands of jobs directly and indirectly connected to the oil and gas industry may be lost during a time when economic development is critical to workers that continue to suffer through an entrenched recession, particularly those in the trades represented by Union *Amici*. Act 13 represents a considered legislative effort to spur the economic development of this Commonwealth and its natural resources, while providing for the health and safety of all Pennsylvania citizens. Act 13 is particularly critical to the unionized laborers and craftsman that depend on the continued viability and promotion of industry in Pennsylvania.

Union *Amici* concur with and hereby adopt each of Appellant’s arguments on the five questions involved in this appeal, and submit the following general argument in support of each.

II. ARGUMENT

This case involves matters of statewide significance for all Pennsylvania citizens, and will have an acute impact on the workers represented by Union *Amici*. Pennsylvania is fortunate to possess significant stores of unconventional gas formations such as the Marcellus Shale. New technology has made this previously untapped resource accessible and created an economic boon to struggling workers across the Commonwealth. Because of the import of this issue, and the need for a considered and uniform approach to the development of Pennsylvania's natural resources, the General Assembly passed, and the Governor signed into law, Act 13 of 2012, 58 Pa. C.S. §§ 2301-3504. Act 13 aims to create uniformity in municipal zoning across the Commonwealth in order to facilitate the extraction and development of Pennsylvania's valuable natural gas resources and at the same time provides consistent and thoughtful environmental protections designed to safeguard the health and safety of all citizens. But in its July 26, 2012 opinion and order, the Commonwealth Court struck down the mainstays of that legislation as unconstitutional and permanently enjoined the implementation of the most key provisions of the Act.

The Commonwealth Court's decision has already jeopardized significant investments in Pennsylvania putting thousands of jobs at risk, and if permitted to stand will cause untold harm to workers directly and indirectly reliant on the oil and gas industry's continued interest and investment in Pennsylvania. For example, Royal Dutch Shell is evaluating whether to build a multi-billion dollar ethane processing plant in Beaver County, the first of its kind in the northeastern United States, which would be used to process ethane into ethylene for use in manufacturing various plastics. Shell Cautious About Region's Ethane Supply, Pittsburgh

Tribune Review (July 10, 2012).¹ The plant itself promises to create approximately 400 full time jobs, and in the estimation of a Beaver County Commissioner, will promote the “revitalization of the Beaver Valley area.” Shell Discusses Future of Cracker Plant in Beaver County, Pittsburgh Post-Gazette (August 23, 2012).² Numerous existing and new businesses would benefit from the proposed plant, and the infrastructure, machinery and construction necessary to support it would create hundreds of jobs in addition to those employed directly by Shell. However, Shell is still in the selection phase for this plant and Ohio and West Virginia are still in the running. Id. Shell has publically noted that its primary concern regarding the Beaver County location is whether it will have a sufficient supply of ethane. Id. Shell’s ability to develop new drilling sites for the extraction of the natural gas necessary to supply the plant will be hampered without the uniform zoning approach embodied in Act 13.

Additional “downstream” economic development projects, including at the Philadelphia Refinery, are also dependent upon a reliable supply of local natural gas feedstock. Partnership Formed To Keep Philadelphia Refinery Open, New York Times (July 2, 2012) (“Carlyle said it also wanted to expand the use of Marcellus Shale natural gas in Pennsylvania as a lower-cost, lower-emission fuel while exploring the possibilities of producing natural gas liquids or other byproducts.”).³ These and other time sensitive projects, which will support thousands of jobs in Pennsylvania, are now at risk of being lost to more competitive states, all at the expense of Pennsylvania’s workers, and unionized labor in particular.

These are merely two examples of the immediate and lasting effects that will be felt by workers across the Commonwealth if the General Assembly is unable to enact the legislation that

¹ Available at: <http://tribelive.com/news/2165133-74/shell-ethane-company-officials-pennsylvania-plant-chemicals-lagin-tax-likely>

² Available at: <http://www.equities.com/news/headline-story?dt=2012-08-23&val=408785&cat=material>

³ Available at: <http://www.nytimes.com/2012/07/03/business/sunoco-and-carlyle-group-to-run-philadelphia-refinery.html>

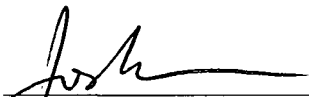
is necessary to keep Pennsylvania competitive in attracting the burgeoning natural gas industry. It is therefore incumbent upon this Court to reverse the economic damage caused by the Commonwealth Court's erroneous ruling, and restore the General Assembly's legislative response to the purely political question of how to plan a comprehensive zoning scheme that promotes economic development while appropriately providing for public health and safety.

III. CONCLUSION

For the reasons expressed above, the Court should reverse the July 26, 2012 Order of the Commonwealth Court.

Dated: September 4, 2012

Respectfully submitted,

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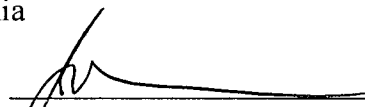
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